

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	
DONALD J. HENNESSY JR., M.D.,	:	<i>ORDER 0000 964</i>
RESPONDENT.	:	

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Division of Enforcement Case No. 10MED133

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Donald J. Hennessy Jr., M.D.  
W180N7950 Town Hall Road  
Menomonee Falls, WI 53051

Division of Enforcement  
Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

Wisconsin Medical Examining Board  
Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Medical Examining Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Donald J. Hennessy Jr., M.D., Respondent herein, whose date of birth is August 2, 1956, is duly licensed to practice medicine and surgery in the State of Wisconsin under license number 23781-20, which was granted on July 1, 1981.

2. Respondent's last known address filed with the Department of Regulation and Licensing is W180N7950 Town Hall Road, Menomonee Falls, WI 53217.

3. Respondent's practice specialty is internal medicine.
4. During the events of this matter, Respondent practiced medicine and surgery at ProHealth Care Medical Associates, Menomonee Falls, WI.
5. On October 3, 2005, Patient SN presented at Respondent's office with symptoms indicating a probable urinary tract infection and a history of chronic pelvic pain dependent on narcotic therapy, endometriosis, irritable bladder and dysfunctional family relationships which Respondent believed contributed to her mood alterations and headaches. Patient SN further provided a history of receiving regular prescriptions for OxyContin and Percocet for pain control.
6. Respondent's initial treatment was to provide a liter of IV fluids and Rocephin 1g IV and 5 mg of Morphine. The Respondent also issued a prescription for OxyContin 40 mg twice daily, Percocet 100 tablets with a recheck in one month.
7. During the course of Respondent's medical care and treatment of Patient SN he prescribed morphine, OxyContin, oxycodone, Percocet, Endocet, and methadone for management of the patient's pain.
8. Morphine is a narcotic used to treat moderate to severe pain and a Schedule II Controlled Substance pursuant to Wis. Stats. § 961.16(2)(a)7, and has habit-forming potential.
9. Methadone is a narcotic pain reliever, is a Schedule II Controlled Substance pursuant to Wis. Stat. § 961.16(2)(a)7, has habit-forming potential and is used as part of drug addiction detoxification and maintenance programs.
10. OxyContin is used to treat moderate to severe pain, is a Schedule II Controlled Substance pursuant to Wis. Stat. § 961.16(2)(a)7, and has habit-forming potential.
11. Oxycodone is used to treat moderate to severe pain, is a Schedule II Controlled Substance pursuant to Wis. Stat. § 961.16(2)(a)7, and has habit-forming potential.
12. Endocet is a combination of acetaminophen and oxycodone, a semisynthetic opioid analgesic, and is indicated for the relief of moderate to moderately severe pain, is a Schedule II Controlled Substance pursuant to Wis. Stat. § 961.16(2)(a)7, and has habit-forming potential.
13. Percocet is a combination of a narcotic and an analgesic/antipyretic. It relieves moderate to moderately severe pain. Percocet is a Schedule II Controlled Substance pursuant to Wis. Stat. § 961.16(2)(a)7, and has habit-forming potential.
14. Respondent's medical records reflect the following subsequent patient complaints, treatment objectives and prescriptions:

#### **2005 Treatment**

<b>Date:</b>	<b>Objective:</b>	<b>Prescriptions:</b>
10/10/2005	Patient called for additional medication due to finishing the Percocet refills.	Respondent prescribed 60 Lorcet 10/650 prn. Refill in 2 weeks.

10/14/2005	Patient complains Lorcet is causing nausea.	Respondent prescribed 70 Percocet tablets as a 1 to 2 every 4 to 6 hours, despite Patient admitting the use of Percocet 5 or 6 daily and all previous Percocet refills were already filled.
10/31/2005	Patient's urinary tract infection cleared. However, has continued headaches and abdominal discomfort.	Respondent prescribed Percocet 5/325, 150 tablets 4 to 5 per day and Oxycontin 40 mg twice daily.
11/9/2005	Patient called with increased abdominal pain and was directed to go to the ER.	
11/11/2005	Follow up from ER visit. Left lower quadrant pain. Going through 10 Percocet per day without relief and nausea.	Prescription for Oxycodone 5 mg 1 to 2 every 4 to 6 hours, 200 tablets until Dec. 1. Oxycontin increased from 40 mg bid to 80 mg bid. Valium for sleep.
11/29/2005	Pain in abdomen is worse.	Reissue Percocet 5/325 up to 10 per day. Switch to Methadone 10 mg 4 tablets twice daily. Valium 10 mg rather than 5 mg.
12/8/2005	Methadone is not getting pain control but sedated. Takes up to 4 Percocet at a time to relieve pain.	Can use 3 Percocet up to 12 per day of Percocet and cut Methadone to 4 a day. Patient will price Oxycontin and generic Fentanyl patches and will see Respondent when Percocet runs out.
12/19/2005	Patient struggles with pain management. Reports dental pain for left upper jaw for a week. Out of Percocet and no relief with Methadone.	Reissued Percocet 10/325, #180. Valium 10 mg 60 tablets, no refill.
12/29/2005	Patient took extra Oxycodone due to being afraid of withdrawal while going off methadone. Taking 13-14 per day. Takes valium for sleep.	Reissued Percocet 10/325 and could take more than 12 tablets per day. Script for 180 tablets. Can call for refill in 2 weeks.

### **2006 Treatment**

01/02/2006	Patient distraught because Endocet and Diazepam were stolen at a party.	Respondent refills Endocet 10/325, 180 tablets and Valium 10 mg, 60 tablets.
01/06/2006	Patient called due to diarrhea, no appetite and crying all the time. Taking 12 Percocet per day and occasionally at night.	Respondent told patient to go to Urgent Care and limit narcotics to no more than 12 per day and double up on Effexor.
1/9/2006	Patient had altercation regarding missing medications. Valium missing and Percocet greatly depleted. Currently taking 13 Percocet per day to manage abdominal pain.	Respondent reissued Percocet 10/325 180 tablets and Valium 60 tablets.

1/14/2006	Call from Patient re: withdrawal symptoms.	Respondent told patient to take Methadone 5 mg. Given 10 tablets and to see Respondent before refills.
1/16/2006	Patient going through emotional times. Can tolerate 1.5 mg of Methadone twice a day and 12 tablets per day. Valium 2-3 times per day.	Plan to continue on Methadone 1 mg daily. Prescription for 60 Valium and 180 Percocet. Re-evaluate in 2 weeks.
1/17/2006	Patient only able to fill 90 of Percocet due to costs. The rest of the prescription was voided. Pharmacy suggested to try Oxycodone 10 mg.	Patient will call to make an appointment.
1/19/2006	Patient called requesting new RX for Oxycodone without the Tylenol 5 mg 360 tablets.	Respondent allowed written script to be mailed to her.
1/26/2006	Patient feels ok with Oxycodone 15 mg and Methadone 5 mg ½ twice daily Taking 1 to 1.5 the Oxycodone 4 to 5 times a day and sometimes 2 if more pain.	Follow up in 1 month. Provided 30 Methadone 5 mg tablets and 240 Oxycodone tablets.
1/26/2006	Telephone message-Patient cancelled 1/30/06 appointment.	
2/6/2006	Patient has bad home situation. The safe was open and all medicines were missing. Admitted to Roger's by parents but financially unable.	Given 10 days of Oxycodone 80 tablets 15 mg; Methadone 5 mg 10 tablets and Valium 20 tablets and 10 mg in case Patient's mom can't restore things.
2/13/2006	Continued family problems and abdominal pains. Impression and Plan: Endometriosis, narcotic dependent for pain control.	Continue on Oxycodone 240 tablets with no refill. Methadone 5 mg. valium 10 mg 1-2 at bedtime for sleep, 60 tablets.
2/14/2006	Phone message from mother regarding concerns over medication. Patient given 240 tablets of Oxycodone yesterday and 31 left. Only 6 tablets of Valium left.	
2/15/2006	Mother called because Patient gone overnight and only returned with portion of pills. Not Methadone left. Mother requested refill of Methadone.	Respondent stated he would order.
3/6/2006	Patient out of narcotics and feels they were taken. Does not want to go through withdrawal before the appointment scheduled in 3 days.	Plan: 3 Methadone 5 mg tablets, 6 Valium 10 mg tablets and 24 Percocet 10/325 tablets with no refills. Respondent said this is the last time he would refill medications early.
3/9/2006	Patient present with mother. Mother's concerns about patient's abuse of drugs.	Valium 10 mg 60 tablets, Percocet 325/10 240 tablets, Methadone 5 mg one half tablet twice daily.

3/22/2006	Telephone message from Patient to discuss issues.	
3/23/2006	Call from Patient because mother is not giving the medications and is getting withdrawal symptoms and increased pain.	Advised mother that if she withholds the patient's medications it is stealing. Respondent did not call in any medication for the patient but advised the patient to call the police if medications are not provided to her.
4/3/2006	Patient has increased lower abdominal discomfort and vaginal odor. Concerned for sexually transmitted disease for a sexual assault. Mother is giving medications to patient.	Valium 60 tablets, Percocet 10/325, 240 tablets, Methadone 5 mg refilled 4/8/06.
4/19/02006	Telephone message from patient that Pharmacy only had 140 Endocet and needs another prescription for Endocet 10/325 100 tablets. Pharmacy is verifying before releasing another script for 100 Endocet. Pharmacy states patient picked up 100 Endocet.	
4/21/2006	Patient claims only received ½ of the prescription and someone else picked up the rest. The Pharmacy filing a police report. Patient is going to withdraw.	Respondent provided patient with 60 Percocet for a week.
4/23/2006	Patient's mother confirms that someone else picked up the patient's medication and patient is doing well and limiting the narcotics.	
5/2/2006	Patient's grandmother had heart attack in Cancun. Patient increased Valium to sleep.	
5/4/2006	Patient to renew medication. Patient suspects sister picked up the narcotics early. Erratic menstrual periods, lower abdominal pain and using 60 Percocet per week/40 in a month.	Plan: Prescription for Valium 60 tablets, Percocet 60 tablets, Methadone 5 mg for a month. Patient will call weekly for refills. Return in a month.
5/10/2006	Notes stating refills for Percocet. Patient will pick up script.	
5/16/2006	Notes stating refills for Percocet. Patient will pick up script.	
5/23/2006	Notes stating refills for Percocet. Patient will pick up script.	
5/25/2006	Notes stating patient only got 25 yesterday because of costs and needs script for 35.	Script written for 35.

5/30/2006	Patient to renew medication. Car was broken into and medications stolen.	Continue on Methadone 5 mg one half a tablet twice daily for month. Valium 5 mg, 60 tablets for prn. Percocet 60 tablets and call for weekly refills.
6/4/2006	Note states Patient called for refill on Percocet and not due for refill until 6/8/2006.	Left message for Patient to call back and discuss.
6/6/2006	Note states mother wishes to discuss Patient's condition and prescriptions.	
6/7/2006	Mother begging Respondent not to give patient anything but Methadone. Patient is out of pills and is abusing medications and is impaired.	Respondent agreed to only provide Methadone.
6/14/2006	Patient does not have adequate pain control with 5 mg Methadone ½ tablet twice daily.	Will provide 10 tid and can adjust dose and make an appointment to refill.
6/20/2006	No show for appointment	
6/21/2006	Patient to discuss pain management. Has lower abdominal pain, no insurance and struggling with family. Has menstrual period and increased pain. Taking 4 Methadone a day.	Plan: Limit Aleve to 2 tablets twice daily. Continue on Methadone at 20 mg twice daily. Trazodone 50 mg start with ½ tablet and increase 3-5 days up to 100 mg at bedtime. Follow up in a month.
6/25/2006	Call from Patient's sister because Patient seems more sedated. Patient missed picking up people at an airport. She was found dead. Only 20 tablets of Trazodone remained in a bottle.	
6/26/2006	Note states medical examiner would like a call with medical history of patient.	

15. Patient SN was found unresponsive by her sister on June 25, 2006 and was pronounced dead of an apparent methadone toxicity.

16. Respondent's conduct in prescribing pain medications as set forth above was not within the course of legitimate professional practice and tended to constitute a danger to the patient in the following respects:

a. Respondent failed to develop an adequate plan to manage Patient SN's treatment for chronic pain, including consideration of referral to a pain management clinic for further evaluation and treatment.

b. Respondent did not verify Patient SN's medical history of ongoing pain management with previous providers.

c. Respondent failed to adequately monitor the amounts of pain medication the patient was receiving and did not adequately address the Patient's consistent use in excess of Respondent's original prescribing timelines and amounts.

d. Respondent prescribed narcotic medications in excessive amounts.

e. Respondent prescribed methadone in excessive amounts and when contraindicated by other pain medications the patient was receiving.

f. Respondent failed to adequately monitor the change in pain medication to methadone.

g. Respondent did not adequately respond to concerns raised by the patient's mother and by the patient's own actions regarding the potential abuse of the pain medications.

17. Respondent's conduct in prescribing pain medications to Patient SN created the risk to the patient of excessive use and potential abuse of the pain medications singly and in combination, which created the further unacceptable risk of overdose, respiratory distress and death.

18. Respondent has been very cooperative throughout the investigation and has expressed significant concern regarding his actions in the prescribing of pain medications and the medical treatment of this patient.

#### CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 448.02(3) and authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent conduct as set forth in above of the Findings of Facts is a violation of violation of Wis. Stats. § 448.02(3) and Wis. Admin. Code § MED 10.02(2) (h).

3. Respondent conduct as set forth in above of the Findings of Facts is a violation of violation of Wis. Stats. § 448.02(3) and Wis. Admin. Code § MED 10.02(2) (p).

#### ORDER

IT IS HEREBY ORDERED that the stipulation of the parties is approved.

IT IS FURTHER ORDERED that Donald J. Hennessy, Jr., M.D. is hereby REPRIMANDED.

IT IS FURTHER ORDERED that the license of Donald J. Hennessy Jr., M.D. to practice medicine and surgery in the State of Wisconsin is hereby LIMITED with the following RESTRICTIONS:

1. Dr. Hennessy is prohibited from prescribing any narcotic substances to patients.



2. Dr. Hennessy shall transfer all patients requiring pain medication to another licensed physician to address the patient's pain management.

3. Dr. Hennessy may petition the Medical Examining Board for modification of this Order to remove this restriction on the following conditions:

a. Dr. Hennessy shall successfully complete the education course entitled "Opiate Maintenance Treatment Programs" provided through Case Western Reserve University, Cleveland, Ohio, or its equivalent. If an equivalent course is selected by Dr. Hennessy, the course must be pre-approved by the Medical Examining Board or its designee. Dr. Hennessy will, within 30 days of completion of this educational requirement, file an affidavit with the Medical Examining Board stating under oath that he has attended in its entirety the course approved for satisfaction of this requirement along with supporting documentation of attendance from the sponsoring organization. Requests for preapproval, the affidavit of attendance and the supporting documentation of attendance will be filed with:

Department Monitor  
Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, Wisconsin 53708-8935

All certifications, affidavits or other documents required to be filed with the Medical Examining Board will be deemed filed upon receipt by the Department Monitor.

Dr. Hennessy will be responsible for paying the full cost of attendance at this course. Dr. Hennessy will not apply any of the continuing education credits earned in satisfaction of this Order toward satisfaction of his Wis. Stat. § 448.13, biennial training requirements.

b. Donald J. Hennessy Jr., M.D. shall appear before the Board to satisfy the Board that he is able to competently resume the prescribing of narcotic substances.

c. The Board may, at its option, continue the restriction, remove the restriction, or modify the restriction to allow resumption of the prescribing of narcotics but require whatever monitoring or supervision the Board deems necessary at that time, including but not limited to monitoring of the prescribing practice by a mentor for a period not to exceed three months.

d. All costs of the petition, reeducation, appearance or any costs accrued under modification of the Order shall be the sole responsibility of the Respondent.

4. Dr. Hennessy shall, within ninety (90) days from the date of this Order, pay to the Wisconsin Department of Regulation and Licensing the costs of this proceeding in the amount of \$1,008.50.

5. Violation of any terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit payment of the costs as ordered, the Respondent's license (No. 23781-20) may, in the discretion of the board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the costs or completion of the continuing education.

6. This Order is effective on the date of its signing.

MEDICAL EXAMINING BOARD

By: Skalko MD MBA Date 5/18/11  
A Member of the Board